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COMPARATIVE ANALYSIS OF PRINCIPAL UNIFICATION BILLS

OGC Has Reviewed

Submitted by Carl E. Hoffman, of the Staff

Reported by Committee

Contains no major changes
revision.

Declaration of Policy

Brief and
wording.

Establishment of National Defense

Section 201 changes
National Security Organiza-
tion by Secretary of National
Defense to consist of Dept. of
Army, Dept. of Navy, Dept. of Air
Force, and other agencies established by
law.

Major Components of

Armed Forces.—Carefully sets forth
functions of armed forces as a whole,
and basic functions of components.
Shows clearly congressional intent as
to purpose for which Congress supports
armed forces.

Secretary of National Defense

Section 102. Generally same as S. 753
(amended) except prohibits Secretary
from exercising control over military
forces.

Robertson Bill (S. 1282)

General.—Does not embody any new
ideas. Restates many provisions of H.
R. 2319. Eliminates single secretary
and attempts to restrain General Staff
influences among newly-created civilian
security agencies. Is believed to be an
attempt to transform S. 758 (H. R.
2319) into legislation acceptable to those
who contend those bills are too "milita-
ristic".

Declaration of Policy.—Emphasis on
coordination of military forces, civilian
control of such forces, and states con-
cept of exercising Nation's military
power. States basic organization of
armed forces, but is subject to misin-
terpretation.

Establishment of National Defense
Establishment.—Section 101 does not
establish a National Defense (or Secu-
rity) Establishment. Instead it creates
"Coordinator for National Defense"
(Presidential deputy). Does provide
for existence of National Security Coun-
cil, Dept. of Army, Dept. of Navy,
Dept. of Air Forces, etc.

Functions of Major Components of
Armed Forces.—Carefully sets forth
functions of armed forces as a whole,
and basic functions of components.
Shows clearly congressional intent as
to purpose for which Congress supports
armed forces.

Secretary of National Defense

Section 102. Generally same as S. 753
(amended) except prohibits Secretary
from exercising control over military
forces.

Cole Bill (H. R. 3469)

General.—Is almost identical to Rob-
ertson bill (S. 1282) except it does not
provide for a separate Air Force. (A
"two-department" bill.)

Declaration of Policy.—Same as S.
1282.

Establishment of National Defense
Establishment.—Same as S. 1282.

Functions of Major Components of
Armed Forces.—Generally same as S.
1282, but does not establish separate
Air Force.

Secretary of National Defense

Section 102. Generally same as S. 753
(amended) except prohibits Secretary
from exercising control over military
forces.

Hoffman Bill (H. R. 3979)

General.—Contains same defense
agencies as H. R. 2319, but incorporates
some of the desirable features of S.
1282. Delineates status and authority
of various agencies more carefully than
H. R. 2319.

Declaration of Policy.—Same as S.
758 reported by Committee.

Establishment of National Defense
Establishment.—Agencies to be estab-
lished generally same as S. 758, but
status of agencies more carefully de-
lineated.

Functions of Major Components of
Armed Forces.—Sets forth basic func-
tions of components of military estab-
lishment. Delineates status and authority
of various agencies more carefully than
S. 1282.

Secretary of National Defense.—
Section 102. Generally same as S. 753
(amended) except prohibits Secretary
from exercising control over military
forces.

Remarks

None of bills provide for specific econ-
omies nor for unified field command of
combat forces within U. S. If such a
"Joint Command" were established it
should not be at seat of national govern-
ment.

If added to S. 758 (amended), a clari-
fication and condensation of declaration
of policy in S. 1282 would result in an
appropriate declaration of policy.

SUGGESTION WHICH MAY BE OF VALUE

tions: *Provided*, That nothing in this subsection shall operate to relieve the military departments of the responsibility for the administration, equipment, supply, and basic training of the forces provided by such departments or to interfere with the exercise of command and authority over the administrative and supporting establishments incident thereto.

(d) The Commander United States Joint Forces shall establish a functionally organized joint military staff so constituted as to permit active participation therein by officers of all the military departments.

(e) The Commander United States Joint Forces shall by means of directives, orders, establishment of training standards, conduct of joint exercises and visits of inspection assure himself that all elements of the forces under his command are maintained in a state of readiness permitting prompt and effective joint action in the event of war or national emergency.

(f) The Commander United States Joint Forces shall submit to the Congress annually a report of activities of his command, including recommendations relative to all means of perfecting the concert of action among the forces of the armed services placed under his command.

(g) The Commander United States Joint Forces shall, by virtue of his office, take precedence over all officers of the United States Army, United States Navy, United States Marine Corps, and United States Air Force, except members of the Joint Chiefs of Staff.

TITLE IV—MEANS FOR EFFECTING ECONOMY IN THE ADMINISTRATION OF THE ARMED FORCES

PERMANENT COMMISSION ON MILITARY EXPENDITURES

SEC. 401. (a) There is hereby established under the supervision and control of the Congress a Permanent Commission on Military Expenditures, hereinafter in this section referred to as the "Commission". The Commission shall be composed of a Chairman who shall be the head thereof and four commissioners. The Chairman and commissioners shall be appointed from civilian life by the President with the advice and consent of the Senate and shall each receive compensation at the rate of \$12,000 a year. The purpose of the Commission is to advise the Congress as to ways and means of providing the most effective national defense consistent with the national economy.

(b) In performing its functions it shall be the duty of the Commission—

(1) To appraise and evaluate national defense expenditures in relation to the national economy.

(2) To maintain accurate and complete records as to the actual cost of the national defense establishment and the several military departments.

(3) To recommend to the Congress ways and means of reducing the cost of maintaining the national defense establishment.

(4) To report to the Congress with respect to any military activities, installations, agencies, projects, or practices within the defense establishment, which are considered to be wasteful, overlapping, unnecessary, uneconomical, contrary to law, or subject to consolidation of transfer

or undertake any function or activity in connection therewith which is now performed by the General Accounting Office.

ARMED FORCES PROCUREMENT AGENCY

SEC. 402. (a) There is hereby established an Armed Forces Procurement Agency, hereinafter referred to as the "Agency" for the purpose of purchasing jointly for the several armed forces all articles, materials, goods, and services not specially manufactured or provided for military use and which are common to the needs of two or more of the armed forces.

(b) The Agency shall be headed by a Director who shall be appointed by the President from civilian life by and with the advice and consent of the Senate and shall receive compensation at the rate of \$14,000 a year. There shall be an Assistant Director appointed by the President from civilian life who shall receive compensation at the rate of \$12,000 a year.

(c) The Agency shall procure for the use of the Department of the Army, Department of the Navy, and Department of the Air Force the following articles, materials, goods and services, and such others in addition as shall be deemed to be of a nonmilitary character and common to the use of two or more of such departments.

All critical and strategic materials for reserve stocks.

Building and construction materials.

Food, beverages, and subsistence stores.

Medical supplies, surgical supplies, and drugs.

Paper and stationery supplies.

Soaps, cleansers, and other common housekeeping supplies.

Basic raw or unfinished materials of all types.

Petroleum products.

Solid fuels.

Office and household furniture.

All real estate and interests in land.

Water supply service from private or community agencies.

Electric current supply from private or community agencies.

Non-specialized vehicles of all types and their appurtenances.

Electrical supplies, equipment, and fixtures not specialized in design.

Textile materials, bedding, and nondistinctive articles of clothing.

Recreational, entertaining, and athletic supplies of all types.

Paints, varnishes, glass and glazier supplies, cordage, marine supplies,

naval stores.

Printing, reproducing and photographing equipment, and supplies of unspecialized types.

The Agency shall submit to the Congress, the President, and the

and publish necessary rules and regulations governing procurement, storage, and distribution of all supplies and services which it provides.

(e) The Agency shall publish a catalog with standard specifications, of all items of its procurement and all military departments shall conform to the catalog terms for such items.

(f) The Agency shall prescribe standard methods of requisitioning, ac-

July 2, 1947

COMPARATIVE PRINT OF H. R. 3

(June 25, 1947)

S. 758, as reported in the Senate

(Reported June 5, 1947)

H. R. 2319

(February 28, 1947)

Printed for the use of the Committee on Expenditures in the Executive Departments
House of Representatives

OF H. R. 3979

the Senate

Executive Departments

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agency for coordinating intelligence and originally did not propose any overseas collection activities for CIA. The strong move to provide specifically for such collection overseas was defeated, and, as a compromise, sections 102(d)(4) and (5) of the National Security Act were enacted, which permitted the National Security Council to determine the extent of the collection work to be performed by CIA. While Congress recognized that CIA would participate in clandestine collection overseas. At that time the Central Intelligence Agency under this authority would take positive action, for example, in subversion and sabotage. Confirmation for this is found in the brief and off-the-record hearings on appropriations for CIA in 1947.^{26/}

The National Security Council in directing the Central Intelligence Agency does so through National Security Council Intelligence Directives which, of course, are binding upon CIA. When the NSC forms a basic policy and assigns implementation to CIA, the Agency then has authority to go ahead. However, it still may be necessary to go to Congress for authority and funds.

Historical Background of the Central Intelligence Agency

This paper, a study of the history of the Central Intelligence Agency, including pertinent materials on World War II intelligence organizations and plans for the post war era, has been ~~by the Office of General Counsel, (A)~~ prepared as an aid to the better understanding of the present ~~Agency~~ structure and functions of the Agency. While the United States has engaged in intelligence activities since its founding, it was not until the events of the early 1940's showed the need for an efficient, fast-moving, intelligence ~~organization~~ ^{service,} ~~a government-wide basis that~~ that

World War II
Coordinator of Information

The events which foretold the advent of the second world war, ~~served as~~ provided ~~impetus to become~~ the impetus for forming a number of government organizations which later ~~served as~~ ~~became~~ ^{the United States} ~~government wide~~ the foundation for the ~~U.S.~~ intelligence activity during the war.

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CHAPTER I

HISTORY

*Historical Background of the
Central Intelligence Agency*

Introduction

As an aid in understanding CIA's present functions and organization, a historical background has been compiled including pertinent material on ~~the~~ World War II agencies and plans for a post war intelligence organization which were in process long before the end of the war. The United States Government has carried on intelligence activities since the days of George Washington, but it was not until the swiftly moving events of the early 1940's showed the need for an efficient method and organization for the development of intelligence that a government-wide system of intelligence work was conceived and later carried out, culminating in the formation and operation of the Central Intelligence Agency.

1. World War II

Coordinator of Information

The events which foretold the coming of World War II, also acted as catalysts in the forming of various government organizations which served as nuclei in the subsequent government-wide expansion consistent with the gigantic war effort. By an Executive Order dated 8 September 1939, President Franklin Roosevelt provided for an office for emergency management "in the event of a national emergency" or the threat of one. Such an office was subsequently established on 25 May 1940.¹ By an administrative order of 7 January 1941, the functions of the office were modified and further defined and included advising and assisting the President in time of emergency,

¹ Executive Order 8248 and Administrative Order of 25 May 1940.

coordinating emergency activities of the Government and informing the President as to the various agencies' progress in emergency matters.

the precursor of a centralized intelligence structure
Six months later, the ~~first United States Government intelligence~~ office, ~~as such~~, was established under the ~~name of~~ Coordinator of Information, ~~and~~ William J. Donovan was named to ~~the~~ position.² He had authority from President Roosevelt to: "Collect and analyze all information and data, which may bear upon national security; to correlate such information and data, and to make such information and data available to the President and to such departments and agencies as the President may determine, and to carry out, when requested by the President, such supplementary activities as may facilitate the securing of information important for national security not now available to the Government." The Coordinator of Information was to have access to information and data within the various departments and agencies but he was not to interfere with or impair the duties and responsibilities of the President's regular military and naval advisers. To assist him, the Coordinator could appoint committees of representatives of the various departments and agencies. Colonel Donovan was to receive no compensation but was entitled to transportation subsistence and other incidental expenses.³ Under ~~his~~ *his* broad mandate, the Coordinator of Information began to ~~put together~~ *build* an organization capable of producing intelligence necessary for the successful carrying out of the war effort.

Office of Strategic Services

In less than a year, on 13 June 1942, by a military order, the President abolished the Office of Coordinator of Information and established the

2. Presidential Order of 11 July 1941 (6 F.R. 3422).

3. Letter from President Roosevelt to Colonel Donovan, 23 July 1941.

Office of Strategic Services (OSS) under the jurisdiction of the Joint Chiefs of Staff. ^{which operated under the same} OSS's mandate was ^{to} quite simple. It was to:

"a. Collect and analyze such strategic information as may be required by the United States Joint Chiefs of Staff; and

"b. Plan and operate such special service as may be directed by the United States Joint Chiefs of Staff."

William J. Donovan was appointed by the President as Director of Strategic Services "under the direction and supervision of the United States Joint Chiefs of Staff." ^P OSS was allowed certain privileges in conducting its operations such as entering into contracts "without regard to the provisions of law relating to the making, performance, amendment, or modification of contracts." (Executive Order 9241, 1 September 1942) Also it was imperative in performing certain of the wartime functions of OSS that latitude be granted in the expenditure of funds.

^{whenever} It was the announced policy of OSS to employ ordinary vouchered moneys ^{whenever} practicable. When, however, such use would have gravely impeded the ^{effective} prosecution of the program directed by the Joint Chiefs of Staff, ^{the} OSS had ^{to} resort to funds expendable without regard to laws relating to the expenditure of government funds. For example, it would have been most difficult to have performed many of the peculiar functions of OSS under mandatory compliance with laws or regulations concerning employment procedures, annual and sick leave, dual compensation, the purchase of motor vehicles, the employment of aliens, the retaining of investigators, or the securing of laborers or other personnel in various foreign countries.

^P The General Accounting Office was willing to accept vouchers showing the expenditure of funds by OSS for such purposes providing that it was stated

4. Military Order, 13 June 1942 (F.R. Doc. 42 - 57595).

that such expenditures were necessary in the performance of its peculiar functions in disregard of existing law and regulation. The National War Agency Appropriation Act of 1945 (P.L. 372) as it pertains to OSS reads as follows:

"Salaries and expenses: For all expenses necessary to enable the Office of Strategic Services to carry out its functions and activities, including salaries of a Director at \$10,000 per annum, one assistant director and one deputy director at \$9000 per annum each; procurement of necessary services, supplies and equipment without regard to section 3709, Revised Statutes; travel expenses, including expenses outside the United States without regard to the Standardized Government Travel Regulations and the Subsistence Expense Act of 1926, as amended (5 U.S.C. 821-833), and any general provision for the fiscal year 1945 to the contrary; preparation and transportation of the remains of officers and employees who die abroad or in transit, while in the dispatch of their official duties, to their former homes in this country or to a place not more distant for interment, and for the ordinary expenses of such interment; rental of news-reporting services; purchase of or subscription to commercial and trade reports; the rendering of such gratuitous services and the disposition, free or otherwise, of such materials as the Director deems advisable; purchase or rental and operation of photographic reproduction, duplicating and printing machines, equipment, and devices and radio-receiving and radio-sending equipment and devices; maintenance, operation, repair, and hire of motor-propelled or horse-drawn passenger-carrying vehicles and vessels of all kinds; printing and binding; exchange of funds without regard to section 3651, Revised Statutes (31 U.S.C. 543); purchase and free distribution of firearms, guard uniforms, special clothing, and other personal equipment; the cost of a compartment or such other accommodations as may be authorized by the Director for security when authorized personnel are required to transport secret documents or hand baggage containing highly technical and valuable equipment; \$57,000,000, of which amount such sums as may be authorized by the Director of the Bureau of the Budget may be transferred to other departments or agencies of the Government, either as advance payment or reimbursement of appropriation, for the performance of any of the functions or activities for which this appropriation is made: PROVIDED, That \$37,000,000 of this appropriation may be expended without regard to the provisions of law and regulations relating to the expenditure of Government funds or the employment of persons in the Government service, and \$35,000,000 of such \$37,000,000 may be expended for objects of a confidential nature, such expenditures to be accounted for solely on the certificate of the Director of the Office of Strategic Services and every such certificate shall be deemed a sufficient voucher for the amount therein certified."

5. U.S.C. Congressional Service, 73th Congress, 2d Session, 1944, p 536.

"1. That it should be a central overall Foreign Intelligence Service which (except for specialized intelligence pertinent to the operations of the Armed Services and certain other Government agencies) could serve objectively and impartially the needs of the diplomatic, military, economic and propaganda service of the Government.

"2. That such a Service should not operate clandestinely within the United States.

"3. That it should have no policy function and should not be identified with any law enforcing agency either at home or abroad.

"4. That the operations of such a Service should be primarily the collection, analysis, and dissemination of intelligence on the policy or strategy level.

"5. That such a Service should be under a highly qualified director appointed by the President and be administered under Presidential direction.

"6. That, subject to the approval of the President, the policy of such a Service should be determined by the Director with the advice and assistance of a board on which the Department of State and the Armed Services should be represented.

"7. That such a Service charged with collecting intelligence affecting national interests and defense should have its own means of communication and should be responsible for all secret activities such as:

- (a) Secret intelligence.
- (b) Counterespionage.
- (c) Crypto-analysis.
- (d) Clandestine subversive operations.

"8. That such a Service be operated on both vouchered and un-vouchered funds.

"9. That such a Service have a staff of specialists professionally trained in analysis of intelligence and possessing a high degree of linguistic, regional or functional competence to evaluate incoming intelligence, to make special reports, and to provide guidance for the collecting branches of the Government.

"10. It is not necessary to create a new agency. The nucleus of such an organization already exists in the Office of Strategic Services."

On 18 November 1944, General Donovan submitted a memorandum to the President which emphasized that "intelligence control be returned to the supervision of the President," and that the "establishment of a central

The Director of OSS enjoyed the confidence of the Congress in managing the disposition of confidential funds as can be seen by reading over the hearings before the subcommittee on appropriation of the 78th Congress, 2d Session.

Plans for a Postwar National Intelligence Agency

~~Over a year before the war's end,~~ studies were undertaken within OSS concerning the concept of a permanent, centralized intelligence service for the United States Government. ^{After} ~~As a result of~~ several months of study, General Donovan drafted a document entitled "The Basis for a Permanent United States Foreign Intelligence Service," which ^{was drafted by General Donovan} presented to President Roosevelt around 10 October 1944. The President returned the paper on 31 October with the comment that an adviser had informed the President that a better and cheaper intelligence system than General Donovan had devised was possible. The President, however, asked that General Donovan continue his work on a post-war intelligence organization. ~~Roosevelt continued to be interested in intelligence and~~ ^{Mr. Roosevelt} Several days before his death requested General Donovan to call a meeting of interested agencies for their suggestions "to the proposed centralized intelligence service."

The 10 October document contained much of the basic scheme which eventually was accepted for the Central Intelligence Agency. General Donovan, wrote that an organization was needed "which will procure intelligence both by overt and covert methods and will at the same time provide intelligence guidance, determine national intelligence objectives and correlate the intelligence material collected by all Government agencies."

Based on his experience General Donovan advised that the establishment of a United States intelligence agency be governed by ten principles:

6. Memorandum from FDR to General Donovan, 5 April 1945.

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authority reporting directly to you [the President] with responsibility to frame intelligence objectives and to collect and coordinate the intelligence material required by the Executive Branch in planning and carrying out national policy and strategy."

A draft directive was also forwarded to the President which detailed the principles set out in the 10 October document and added several new proposals as functions and duties of the proposed agency including: "Coordination of the functions of all intelligence agencies of the Government . . . ; collection, either directly or through existing Government Departments and agencies, of pertinent information . . . ; procurement, training and supervision of its intelligence personnel; subversive operations abroad; and determination of policies for and coordination of facilities essential to the collection of information." The Donovan plan also recognized the element of secrecy necessary to the successful operation of an intelligence organization in that the Director was to have authority "to employ necessary personnel and make provision for necessary supplies, facilities, and services" and he "may provide for the internal organization and management . . . in such manner as he may determine."

The Donovan proposal was sent to various officials and the Joint Chiefs for comment. Various counter proposals were made and on 24 January, the Joint Strategic Survey Committee submitted a report to the Joint Chiefs of Staff, which was basically the Donovan Plan with ~~some~~ ^{and refinements} revisions. This report was then used as the Joint Chiefs of Staff report which was dated 19 September 1945, over a month after the war had ended.

The draft directive, submitted by the Joint Chiefs, called for a National Intelligence Authority composed of the Secretaries of State, War and Navy and a representative of the Joint Chiefs of Staff which was to be

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responsible for overall intelligence planning and development, inspection and coordination of all federal intelligence activities and ^{to} assure the most effective accomplishment of the intelligence mission related to the national security. A Central Intelligence Agency with a director appointed by the President was to be responsible to the NIA and assist it in its mission. An Intelligence Advisory Board made up of the heads of the principal military and civilian agencies having functions related to the national security was to advise the Director of Central Intelligence.

The Donovan Plan undoubtedly had a great deal of influence on the Joint Chiefs even though they criticized it because the organization he proposed would "overcentralize the national intelligence service" without compensating advantages and "place it at such a high level that it would control the operation of departmental intelligence agencies, without responsibility, either individually or collectively, to the heads of departments concerned."⁷

Various proposals by the Joint Chiefs indicate that the organization they envisaged would not be an undertaking which would result in a "too radical reorganization with the attendant disturbance of the present intelligence set-up." While accepting coordination by a National Intelligence Authority, the Joint Chiefs recommended that the existing intelligence agencies should continue to function. Their products, however, were to be freely available to the Central Intelligence Agency for synthesis, and the operations of the departmental intelligence agencies were to be open to inspection by the Agency in support of its planning function. In this connection, the interesting phrase "protection of intelligence sources and

7. Report by the Joint Strategic Survey Committee, "Proposed Establishment of a Central Intelligence Service" 24 January 1945.

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methods" was used. In the draft directive immediately following, the

statement that operations of the departmental intelligence agencies were to be open to the Agency, the following sentence appeared; In the interpretation of this paragraph, the National Intelligence Authority and the Central Intelligence Agency will be responsible for fully protecting intelligence sources and methods, which due to their nature, have a direct and highly important bearing on military operations."

Secretary of the Navy, James Forrestal considered the Joint Chiefs of Staff paper "soundly conceived" and in a memorandum to the Secretary of War on 13 October 1945 suggested that the proposal for a federal intelligence agency should be pushed "vigorously at the White House." Shortly thereafter Assistant Secretary Lovett was placed in charge of a committee in the War Department to study the matter and provide recommendations which could be used as a basis for discussions with the Secretaries of State, War and Navy who had already informally discussed a national intelligence organization.⁸

After considering the views and opinions of a great many people experienced in wartime intelligence, the Lovett Committee submitted a report to the Secretary of War which presented the case for a centralized national intelligence organization very similar to that in the Joint Chiefs of Staff report submitted six weeks previously.⁹ The Lovett Committee report served as a basis for the recommendation to the President for the establishment of a national intelligence organization which was submitted on 7 January 1946 by the Secretaries of State, War and Navy. A State Department proposal that the intelligence agency draw its funds from the departments participating in the National Intelligence ^{Authority} ~~Agency~~ rather than from an independent budget was the only major change incorporated in the Lovett Committee report.

8. Memorandum for the President, Joint Chiefs of Staff and others from Robert A. Lovett, Assistant Secretary of War, dated 23 October 1945.

9. 3 November 1945.

Under section 17 of the original State plan, funds for the conduct of intelligence operations by the National Intelligence Authority, as distinct from those operations conducted by the individual agencies, would be provided by the departments and agencies participating in such operations. The amounts and proportions to be agreed to by the participating agencies based on the responsibilities and capabilities of those agencies. The State Department submitted a revised plan later in December in which it was stated that "the State Department strongly believes . . . that an independent budget for the Central Agency should be avoided for security reasons. Since passage of the Independent Offices Appropriations Act, 1945 (Public Law 358, 78th Congress), a nondepartmental agency without an independent budget appears to be impossible."¹⁰

In their final recommendations to the President, the Secretaries of State, War and Navy apparently agreeing with the State Department proposal suggested that funds for the National Intelligence Authority be provided by the participating departments in the amount and proportions agreed upon by members of the Authority. The Director of the Central Intelligence Agency, under the Authority, would be able to "employ necessary personnel and make provisions for necessary supplies, facilities and services" within the limits of the funds made available.¹¹

The Central Intelligence Group

The National Intelligence Authority and the Central Intelligence Group were formally authorized by a Presidential Directive dated 22 January 1946. Two differences between the recommendations of the Secretaries and the Presidential Directive are of significance. Paragraph 9 limited CIG to

10. Memorandum for Secretaries of War and Navy from Alfred McCormack, Special Assistant to the Secretary of State, 15 December 1945.
11. Memorandum to the President from Secretaries of State, War, and Navy, dated 7 January 1946.

investigations outside the continental limits of the United States and its possessions except as provided for by law and Presidential Directives. Paragraph 10 broadened the responsibility of NIA and the Director of Central Intelligence toward protecting intelligence sources and methods. As originally contemplated the responsibility in this field was confined to protecting sources and methods with which the Central Intelligence Director became familiar in inspection agencies especially those bearing on military operations. The Presidential Directive touched upon the question of appropriations only in the first sentence of paragraph 2, ~~which stated:~~

"Within the limits of available appropriations, you shall each [Secretaries of State, War and Navy] from time to time assign persons and facilities from your respective departments, such persons shall collectively form a Central Intelligence Group . . ."

Text of Directive *February 1946*

"1. It is my desire, and I hereby direct, that all federal foreign intelligence activities be planned, developed and coordinated so as to assure the most effective accomplishment of the intelligence mission related to the national security. I hereby designate you, [Secretaries of State, War and Navy] together with another person to be named by me as my personal representative, as the National Intelligence Authority to accomplish this purpose.

"2. Within the limits of available appropriations, you shall each from time to time assign persons and facilities from your respective departments, which persons shall collectively form a Central Intelligence Group and shall, under the direction of a Director of Central Intelligence, assist the National Intelligence Authority. The Director of Central Intelligence shall be designated by me, shall be responsible to the National Intelligence Authority, and shall sit as a nonvoting member thereof.

"3. Subject to the existing law, and to the direction and control of the National Intelligence Authority, the Director of Central Intelligence shall:

"a. Accomplish the correlation and evaluation of intelligence relating to the national security, and the appropriate dissemination within the Government of the resulting strategic and national policy intelligence. In so doing, full use shall be made of the staff and facilities of the intelligence agencies of your departments.

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"b. Plan for the coordination of such of the activities of the intelligence agencies of your departments as relate to the national security and recommend to the National Intelligence Authority the establishment of such over-all policies and objectives as will assure the most effective accomplishment of the national intelligence mission.

"c. Perform, for the benefit of said intelligence agencies, such services of common concern as the National Intelligence Authority determines can be more efficiently accomplished centrally.

"d. Perform such other functions and duties related to intelligence affecting the national security as the President and the National Intelligence Authority may from time to time direct.

"4. No police, law enforcement or internal security functions shall be exercised under this directive.

"5. Such intelligence received by the intelligence agencies of your departments as may be designated by the National Intelligence Authority shall be freely available to the Director of Central Intelligence for correlation, evaluation or dissemination. To the extent approved by the National Intelligence Authority, the operations of said intelligence agencies shall be open to inspection by the Director of Central Intelligence in connection with planning functions.

"6. The existing intelligence agencies of your departments shall continue to collect, evaluate, correlate and disseminate departmental intelligence.

"7. The Director of Central Intelligence shall be advised by an Intelligence Advisory Board consisting of the heads (or their representatives) of the principal military and civilian intelligence agencies of the Government having functions related to national security, as determined by the National Intelligence Authority.

"8. Within the scope of existing law and Presidential Directives, other departments and agencies of the Executive Branch of the Federal Government shall furnish such intelligence information relating to the national security as is in their possession, and as the Director of Central Intelligence may from time to time request pursuant to regulations of the National Intelligence Authority.

"9. Nothing herein shall be construed to authorize the making of investigations inside the continental limits of the United States and its possessions: except as provided by law and Presidential Directives.

"10. In the conduct of their activities the National Intelligence Authority and the Director of Central Intelligence shall be responsible for fully protecting intelligence sources and methods."

On the initiative of the Executive Department, the United States for the first time in its history, launched a national intelligence organization. Its charter was written in broad terms, which enabled the embryonic agency to "feel its evolutionary way and handle obstacles only in such order as it deems best."¹² Many of the obstacles, however, were inherent in the charter under which the national intelligence system was to operate. The criterion of all NIA action was whether the action was necessary to the planning, development and coordination of "Federal foreign intelligence activities ~~XXXX~~ so as to assure the most effective accomplishment of the intelligence mission related to the national security." The term "national security" if interpreted narrowly was considered ^{very close to be} an unfortunate limitation upon CIG because "many national interests other than security can be served by a central intelligence agency submitting information to the policy makers within the Government."¹³

The operating agency under the National Intelligence Authority, the Central Intelligence Group, was independent in name only because for all practical purposes the activities of CIG were subject to the budget heads of the three departments - State, War and Navy. Also, the agency had no employment rights, obtaining its personnel by assignment.

After the NIA and CIG system was in existence for about one year as a purely executive creature, ^{a great deal of} ~~sufficient~~ ^{developed} interest had been generated in the Congress ^{which culminated in} ~~sooner~~ legislation ~~was proposed~~ creating a National Security Council and a Central Intelligence Agency. Studies made by the Senate ^{Armed Services} Committee "and all testimony received by it, shows the need for closer and continuous coordination on a high level within the Government of our domestic, foreign and military policies, for an appropriate intelligence organization to ~~serve both military and civilian agencies separately...~~"¹⁴

-12- Memorandum to General Magruder from Commander Donovan, General Counsel, OSS, 23 January 1946.

18 July 1958

~~SECRET~~

~~SECRET~~ The National Security Act of 1947

Background for Intelligence Legislation

The postwar Congressional investigations into the Pearl Harbor disaster have been cited as one of the compelling reasons for the establishment of the Central Intelligence Agency. As a result of its investigation in December of 1946, the House Committee on Military Affairs issued "A Report On The System Currently Employed In the Collection, Evaluation and Dissemination of Intelligence Affecting the War Potential of the United States", which recognized the need for strong intelligence as the "nation's first line of defense". The Committee made nine recommendations:

Recommendation 1: That the National Intelligence Authority, established on January 22, 1946, by Presidential directive, be authorized by act of Congress (This is designed to give the new authority a firmer base.)

Recommendation 2: That the National Intelligence Authority shall consist of the Secretaries of State, War, and the Navy, or deputies for intelligence. (The Secretaries are obviously too busy to give this highly important subject the attention it deserves.)

Recommendation 3: That the Central Intelligence Group receive its appropriations direct from the Congress. (At present the Group receives its appropriations as grants from the State Department, War Department, and the Navy Department, an unwieldy and sometimes awkward procedure.)

Recommendation 4: That the Central Intelligence Group have complete control over its own personnel. (At present the Group receives drafts from the Departments of State, War, and Navy.)

21 House Report No. 2734, December 17, 1946

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Recommendation 5: That the Director of the Central Intelligence Group be a civilian appointed for a preliminary term of 2 years and a permanent term of 10 years, at a salary of at least \$12,000 a year.

(A civilian would be less subject to the control or criticism of any military establishment, less likely to have ambitions in another direction, would be more in keeping with American tradition, would be more symbolic of the politico-military nature of the problem posed by intelligence in peacetime; furthermore, there is nothing to keep a qualified Army or Navy officer from accepting the post in civilian clothes, and there is every desire, by setting the tenure of office at 10 years and making the salary substantial, to make the post attractive to one who has learned intelligence thoroughly in the Army, Navy, or Foreign Service of the State Department. Continuity of service is recognized as very important.)

Recommendation 6: That the Director of the Central Intelligence Group be appointed by the President by and with the consent of the Senate.

Recommendation 7: That the Director of Central Intelligence shall (1) accomplish the correlation and evaluation of intelligence relating to the national security, and the appropriate dissemination within the Government of the resulting strategic and national policy intelligence, and in so doing making full use of the staff and facilities of the intelligence agencies already existing in the various Government departments; (2) plan for the coordination of such of the activities of the intelligence agencies of the various Government departments as relate to the national security and recommend to the National Intelligence Authority the establishment of such over-all policies and objectives as will assure the most effective accomplishment of the national intelligence mission; (3) perform, for the benefit of said intelligence agencies, such services of common concern related directly to coordination, correlation, evaluation, and dissemination as the National Intelligence Authority shall determine can be more efficiently accomplished contrally; (4) perform such other similar functions and duties related to intelligence affecting the national security as the Congress and the National Intelligence Authority may from time to time direct. It is specifically understood that the Director of Central Intelligence shall not undertake operations for the collection of intelligence.

(This paragraph is intended to enable the Central Intelligence Group to concentrate on the analysis and evaluation of high-level intelligence for the President and others who have to determine national policy. One should not remove any intelligence operation from

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the agencies where day-to-day policies and decisions have to be made; the collection and basic analysis in each field of intelligence should be assigned to the agency having primary responsibility in that field.)

Recommendation 8: That paragraphs 2, 4, 5, 6, 7, 8, 9, and 10 of the Presidential directive of January 22, 1946, relating to the establishment of a National Intelligence Authority be enacted into law, with such revisions in wording as may seem necessary.

(The President's directive was carefully prepared and had at the time of its publication, the support of the interested agencies.)

Recommendation 9: That the Army be requested sympathetically to examine further the question of the establishment of an Intelligence Corps for the training, development, and assignment of especially qualified officers.

In July 1946, a draft of enabling legislation for a proposed Central Intelligence Agency (CIA) was sent to the White House by the Central Intelligence Group. It called for a National Intelligence Authority (NIA) consisting of the Secretaries of State, War, and Navy, a personal representative of the President and the "Director of the Central Intelligence Agency" as a non-voting member. The NIA was to supervise the activities of CIA. It was provided that CIA was to be established "with a Director who shall be the head thereof." After review, Mr. Clark M. Clifford, special counsel to the President, suggested various changes and additions to CIG. In December a more detailed and comprehensive draft was submitted to the White House which reflected ^{the} experience gained after 10 months of operation under the 22 January ¹⁹⁴⁶ Executive Order.

In proposing this legislation CIG attempted to overcome ^{the unworkable} features of its charter ~~which quickly had become apparent~~, ^{which} one of the most glaring of ~~these~~ ^{features} was the necessity for CIG to obtain personnel from the State, War and Navy Departments. It was not until well into the summer of 1946 that arrangements were made for CIG to hire personnel directly. Budgetary problems also

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were very difficult to handle until ~~an~~ agreement was reached which established a working fund at the disposal of the CIG. Fortunately for CIG all of the departments and agencies of the Government and particularly the Bureau of the Budget, the General Accounting Office and the State, War, Navy and Treasury Departments, were quick to realize the special administrative problems which arose in the administration and operations of an intelligence agency. They made possible the arrangements which enabled the agency to operate. However, the manner of administrative and logistical support ~~was~~ ^{was} always considered to be of a temporary nature pending the passage of some form of military unification legislation, ^{as to} ~~such as had been initiated~~ ^{provision for} in 1945 ~~and which was drafted to include a centralized intelligence~~ ¹⁶ ~~organization.~~

The second draft of enabling legislation, which was sent to the White House in December 1946, was an expansion of the framework instituted by the Presidential directive adding an Intelligence Advisory Board, the organization plan for the Agency, general authorities and appropriations. ^{the draft of enabling legislation had} ~~December draft~~ incorporated the term "with a Director of Central Intelligence who shall be the head thereof." This particular wording was the same as the terminology in the 22 January directive, ^{to be filled by an} ~~and its~~ ^{entire} ~~apparent purpose~~ ^{with} ~~was~~ to create a post ~~with an~~ ^{official} ~~who was to be~~ responsible for the centralized intelligence functions for the federal government, ~~and who~~

⁹⁻¹⁶
Report to honorable James Forrestal on Unification of the War and Navy Department; Senate Committee Print, 79th Congress, 1st Session.

~~Statement of the Director of Central Intelligence before the House Armed Services Committee, 8 April 1948, [redacted].~~

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~~to have~~ an intelligence agency to assist him.

At the time this proposed legislation was being studied at the White House, President Truman, In January 1947, announced that the War and Navy

Departments had agreed on a legislative program for unification of the armed services, ¹⁸ ~~and~~ Shortly thereafter an ~~earnest~~ ^{serious} effort was ~~initiated~~ ^{made} to

draft unification legislation for submission to Congress. A team consisting of Vice Admiral Forrest Sherman, Major General Lauris Norstad and Charles

Murphy, Administrative Assistant to the President, ~~was~~ ^{was} selected to write

the White House version of the National Defense Act of 1947. Because many of

~~INSERT I~~

~~This team made CIA in its
draft the coordina~~

~~This team~~

The draft which ^{resulted} followed made

the CIA the coordinating agency

for intelligence, apparently, ~~follow-~~
adapting to the intelligence ~~problem~~ ~~field~~
~~g. previous the~~ ~~adapting~~ the

example made in earlier ^{military} unific-

ation proposals, which envisioned
a single defense organization

~~with~~ to which was attached

a number of coordinating

agencies, ~~with~~ ^{some} for inter-military

departmental coordination and

for military-civilian coordina-
tion. ¶ The ~~committee~~^{team} did not in-
clude in the ~~is~~ their draft
many of the more controversial
proposals ~~for intelligence~~ contained
in the December C1^G draft
probably because of anticipated
difficulties in getting them
through Congress. Instead, they
sought ~~to~~ simply to lay down the
broad framework of a central
intelligence service ~~for~~ upon
which the ~~organizational~~ detailed
organization could later be
developed.

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agency for coordinating intelligence and originally did not propose any overseas collection activities for CIA. The strong move to provide specifically for such collection overseas was defeated, and, as a compromise, sections 102(d)(4) and (5) of the National Security Act were enacted, which permitted the National Security Council to determine the extent of the collection work to be performed by CIA. While Congress recognized that CIA would participate in clandestine collection overseas. At that time the Central Intelligence Agency under this authority would take positive action, for example, in subversion and sabotage. Confirmation for this is found in the brief and off-the-record hearings on appropriations for CIA in 1947.^{26/}

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the previous unification proposals envisioned ^(or defense) ~~an~~ organization with various coordinating agencies, some to coordinate policies and programs of the military departments, and some to coordinate military policies and programs with intimately connected civilian programs, the drafters apparently decided to include ^{CIA} ~~as~~ ^C the coordinating agency for intelligence in the National Defense Act draft. In view of the difficulties expected before its passage, the committee probably decided not to include in the bill many of the more controversial proposals ^(from intelligence) including many of the sections appearing in the CIG enabling legislation draft which had been submitted in December. ^{December} ~~The~~ ^{The Committee} ~~sought instead to lay down the broad~~ framework of a central intelligence service was what the committee sought; the details could come later, they said.

The first draft of the new unification legislation was received by the Central Intelligence Group for comments on 22 January. Section 102(a) of the draft stated that "There shall be in the Council of National Defense a Central Intelligence Agency with a Director who shall be the head thereof" The Director of CIG, Lt. Gen. Vandenberg, the General Counsel of CIG, Mr.

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Report and Analysis by the Legislature Reference Service, Library of Congress on H.R. 2319, House Committee on Expenditures in the Executive Departments, 1947.

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Houston, and one of his assistants met with the drafters the next day and submitted recommendations for incorporation in the next draft. General Vandenberg suggested that the Director's function of providing policy makers with pertinent information should be spelled out more clearly. While General Vandenberg was strongly opposed to the ^(participation of the) Central Intelligence Agency ^{or} its director ~~participating~~ in policy decisions on any matter, he felt that the Director of Central Intelligence should be present at meetings of ^{the} National Security Council. To this General Norstad voiced serious exceptions, as he felt that the Council was already too big. He thought that the Director should not even be present as an observer, as this had proved to be cumbersome and unworkable at meetings of the Joint Chiefs of Staff. As a compromise, Admiral Sherman suggested that the Director should normally be present at meetings of the Council, in its discretion. General Vandenberg concurred in this, as did General Norstad, and it was accepted with the additional proviso that the Joint Chiefs of Staff would also attend meetings at the discretion of the Council.

General Vandenberg indicated the difficulties which he had had in having to go to the National Intelligence Authority on many problems. He felt that the difficulties of his position would be multiplied, as he would have to ask policy guidance and direction from the Council, which was to consist of many more members than the N.I.A.. He was assured that the intent of the act was that the CIA would operate independently and come under the Council only on such specific measures as the Council would, from time to time desire to direct. It would not be necessary for the agency to ask continual approval from the Council.

The Director ^{was} pointed out the difficulties of operation where clandestine methods were involved in the absence of detailed legislation empowering him to

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operate on unvouchered funds, select certain types of personnel, and discharge employees for any question of possible disloyalty.

It was decided that the Director of Central Intelligence should report to the Council on National Defense. General Vandenberg indicated that it would be necessary to report somewhere and that both the President and he did not want another agency "free wheeling" around the government. However, it was thought that the agency should have sufficient power to perform its own functions without it, being necessary to have specific approval from the Council on each action.

The next draft received by CIG reflected some of these suggestions. A major change was in the beginning of the Intelligence section which read: "There is hereby established a Central Intelligence Agency . . . with a Director of Central Intelligence who shall be the head thereof . . ." In the third draft when the paragraph regarding the position of the Director as the Intelligence Advisor of the Council was eliminated, the Army-Navy conferee pointed out that the position of the Director as the government's intelligence advisor was inherent in the position itself. ¹⁹ Apparently this was a reason for the wording "with a Director of Central Intelligence" remaining and appearing in the eventual legislation; the position of Director of Central Intelligence was recognized from the beginning as being more than the head of the Central Intelligence Agency but rather as the Chief Intelligence Advisor in the government.

It must be remembered that in 1947, Congress and the President's Office were ~~unintentionally~~ ^{strongly} influenced by the Pearl Harbor investigations which showed the need for an effective intelligence agency. This was stressed in House and Senate hearings on the National Security Act bill, and witness after

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witness testified as to value of centralized intelligence. It was also pointed out on numerous occasions that the provisions for a Director of Central Intelligence and a Central Intelligence Agency would be simply a legislative recognition of the President's order of 22 January 1946. The basic role of the Director of Central Intelligence from 1946 was described by General Vandenberg: ^{in April 1947,}

"The Director of Central Intelligence is presently charged with the following basic functions:

1. The collection of foreign intelligence information of certain types -- without interfering with or duplicating the normal collection activities of the military and naval intelligence services, or the Foreign Service of the State Department.
2. The evaluation, correlation and interpretation of the foreign information collected, in order to produce the strategic and national policy intelligence required by the President and other appropriate officials of the Government.
3. The dissemination of the national intelligence produced.
4. The performance of such services of common concern to the various intelligence agencies of the Government as can be more efficiently accomplished centrally.
5. Planning for the coordination of the intelligence activities of the Government so as to secure the more effective accomplishment of the national intelligence objectives." ~~20~~ 9/

General Vandenberg also touched upon the responsibilities of the Director to the intelligence community:

"In order to perform his prescribed functions, the Director of Central Intelligence must keep in close and intimate contact with the departmental intelligence agencies of the Government. To provide formal machinery for this purpose, the President's Directive established an Intelligence Advisory Board to advise the Director. The permanent members of this Board are the Directors of Intelligence of the State, War and Navy Departments and the Air Force. Provision is made, moreover,

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Statement before the Committee on Expenditures in the Executive Department.

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to invite the heads of other intelligence agencies to sit as members of the Advisory Board on all matters which would affect their agencies. In this manner, the Board serves to furnish the Director with the benefits of the knowledge, advice, experience, viewpoints and over-all requirements of the departments and their intelligence agencies." *21* In its report to accompany HR 4214, the

National Security Act of 1947, the House Committee on Expenditures in the Executive Department recognized the importance of the Central Intelligence Agency provision of the Act in relation to the coordination of United States policies in the foreign and military fields. The committee reported that, "In order that the National Security Council in its deliberations and advice to the President may have available adequate information, there is provided a Central Intelligence Agency."

On 10 February 1947, Mr. Allen Dulles submitted several comments to CIG on its enabling legislation. He wrote that consideration should be given to having the Director of Intelligence vote in NIA and "also to permit matters to be referred to the President" in case by any chance there should be a difference of opinion between the Director and the other members of the authority". Mr. Dulles also stated that reference to the conduct of foreign intelligence operations "centrally" does not have much meaning and suggested that it should be stated directly that the operations are to be carried on by the Central Intelligence Agency.

Specific reference to the organizational place of CIA and its position relative to the National Security Council and other agencies did not occur in the hearings conducted on the National Security Act bill. *Below* often. Two of the more authoritative colloquies are included.

On 1 April 1947, the Senate Armed Services Committee held a hearing on the National Security Act of 1947 legislation at which Admiral Sherman and

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Ibid.

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General Vandenberg testified. The following are excerpts from the hearings:

SENATOR TYDINGS: . . .when you get down to the Central Intelligence Agency, which certainly is one of the most important of all the functions set forth in the bill, I notice that it reports directly to the President and does not seem to have any line running to the War Department, or the Navy Department, or to the Secretary for Air. And I was wondering if that rather excluded position, you might say, was a wholesome thing. It seems to me that Central Intelligence Agency ought to have more direct contact with the Army and the Navy and the Air Force; and as I see it on the chart here, it is pretty well set aside and goes only to the President. What is the reason for that?

ADMIRAL SHERMAN: Well, sir, this diagram shows the primary control of the Central Intelligence Agency through the National Security Council which, of course, is responsible to the President. But, of course, the Central Intelligence Agency, by its detailed directive, takes information in from the military services and also supplies them with information.

In other words, it is a staff agency and controlled through the National Security Council, which is supported by the military services, and in turn, supports them.

SENATOR TYDINGS: It seems to me that of course they would diffuse such information as a matter of orderly procedure to the Army, Navy and Air Force, as they collected the information and as they deemed it pertinent. But I would feel a little more secure about it if there were a line running from that agency to the War Department, the Navy Department, and the Air Force, rather than have it go up through the President and back again. Because the President is a rather busy man, and while he has control over it, one of its functions, it seems to me, ought to be to have a closer tie-in with the three services than the chart indicates.

ADMIRAL SHERMAN: Well, sir, that is the trouble with the diagram. Actually, the Security Council, placed directly under it, has members of the three departments, the Secretary of National Defense, the Central Intelligence Agency, who collaborates very closely with Military and Naval Intelligence, and there are a good many other cross-relationships.

SENATOR TYDINGS: I realize that, but even so, I think intelligence is about as important a part of running a war as there is, as I know you will agree. And it is rather set off there by itself, and is only under the President; which is all right for general direction purposes, but I do not feel satisfied in having it over there without some lines running to the War Department, the Navy Department, and the Air Force, even though that might follow and they might do it anyhow.

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ADMIRAL SHERMAN: Well, in a further development of this chart, we might show a line of collaboration and service and so on, extending from the Central Intelligence Agency to the three departments, and to these others.

SENATOR TYDINGS: To the Joint Chiefs of Staff, anyway.

ADMIRAL SHERMAN: They serve the Joint Chiefs of Staff, as a matter of fact. We have a Central Intelligence (man) in the Policy Council of the Research and Development Board at the present time.

SENATOR TYDINGS: If you ever do another chart, will you do me the favor of connecting that up with those three departments and with the Joint Chiefs of Staff? Because it looks like it is set up in that way to advise the President, more than to advise the services and the Joint Chiefs of Staff; which, of course, is not the intention of it at all, in my opinion.

ADMIRAL SHERMAN: We tried, in this particular chart, to show only the primary line of control, with the exception of the dotted line from the President to the Joint Chiefs of Staff, which is there for constitutional reasons.

SENATOR TYDINGS: Well, I hope that my comments will cause us to find some way that we can make sure that someone will offer an amendment from the War Department or the Navy Department that the Intelligence Agency is to have direct tie-in with the Joint Chiefs and the Army, Navy, and Air Force. Otherwise, we may have another Pearl Harbor controversy, with the question arising, "Who got the information?" And the reply, "It was not transmitted."

That is one thing that should not happen again.

And as this is set up, it would lend the layman the opinion that it was more or less detached, rather than an integral part of the three services.

SENATOR TYDINGS: Admiral, that is an awfully short bit of explanation, under the caption "Central Intelligence Agency," the way it is set up here, separately, to be appointed by the President, and superseding the services now run by the Army and the Navy, I respectfully submit to you and to General Norstad that it might be wise to put an amendment in there, in order to make certain that the thing is understood; that this Central Intelligence Agency shall service the three departments and the Joint Chiefs of Staff, and have some tie-in with the three departments, rather than to leave it hanging up there on a limb all off it itself. I do not think that would change anything materially, but it would clarify it, and make it plain that we are setting up something for the purposes for which we conceive it to be set up.

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ADMIRAL SHERMAN: Well, sir, I would like to make a comment on the language as to the Central Intelligence Agency. At one time in the drafting we considered completely covering the Central Intelligence Agency in the manner that it should be covered by law.

SENATOR TYDINGS: Admiral, my point is simply this: that under the wording as to the Central Intelligence Agency which begins on page 20 and ends at the top of page 22, it deals more or less with consolidation and not with the duties that devolve upon that office. It seems to me there is a void in the bill that ought to be eliminated.

ADMIRAL SHERMAN: Well, we considered the matter of trying to cover the Central Intelligence Agency adequately, and we found that that matter, in itself, was going to be a matter of legislation of considerable scope and importance.

← On 25 April 1947 during a hearing of the House Committee on Expenditures in the Executive Department *with Secretary Forrestal testifying the following remarks were made:*

SECRETARY FORRESTAL. The only objection is again the general one of the limitations that could conceivably stop very prompt action.

MR. BOGGS. The Director of the Central Intelligence Agency would work under the National Security Council.

SECRETARY FORRESTAL. That is correct.

Yes MR. BOGGS. He is not a member of the National Security Council; he is independent appointment of the President, but he works under, on this chart -- he is not a member of the Council, the heavy line drawn here, but he is more or less an executive secretary on intelligence matters for the Council.

SECRETARY FORRESTAL. Well, it is obvious, Mr. Boggs, that the results of his work would be of essential importance to the Security Council.

MR. BOGGS. I think so, and I agree with you, but the thought that I have in mind was that he should be a member of the Council himself. After all, he is dealing with all the information and the evaluation of that information, from wherever we can get it. It seems to me that he has knowledge and information of matters which the National Security Council would consider more information at hand and the evaluation of that information than any other member of that Council. He should be put on an equal basis.

SECRETARY FORRESTAL. I think that there is always some limit to the effectiveness of any organization in proportion to the number of people that are on it. The services and the intelligence information of the Director of Intelligence would be available, and certainly no man who is either the Secretary of National Defense or the Chairman of the Security Council, would want to act or proceed without constant reference to the sources available to this Central Intelligence Director. But again, I

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would not try to specify it by law, so confident am I that the practical workings out of this organization would require his presence most of the time.

MR. BOGGS. I can see -- I do not know that I can see -- I can visualize in my mind, even if this bill becomes a law, as presently set up, a great deal of room for confusion on intelligence matters. Here we have the Director of the Central Intelligence Agency, responsible to the National Security Council, and yet the Director is not a member of that Council, but he has to get all of his information down through the chain of the Secretary of National Defense, and all the other agencies of Government in addition to our national defense agencies, the Secretary of Agriculture, the Secretary of State, and so forth. I just cannot quite see how the man is going to carry out his functions there without a great deal of confusion, and really more opportunity to put the blame on somebody else than there is now.

SECRETARY FORRESTAL. Well, if you have an organization, Mr. Boggs, in which men have to rely upon placing the blame, and this is particularly true of Government, if you once get that conception into their heads, you cannot run any organization, and it goes to the root, really, of this whole question. This thing will only work, and I have said from the beginning it would only work, if the components in it want it to work.

MR. BOGGS. Right, I certainly agree with that. Now, sir, in the event this bill becomes a law, will it require very much additional legislation to implement it and make it effective, in your opinion?

SECRETARY FORRESTAL. Well, I would think there should be an examination of all laws that deal with the establishment of the War Department and the Navy Department, and a dusting off, so to speak, of their functions in consonance with this legislation, if it is passed.

General Vandenberg in his testimony before the Senate Armed Services Committee on the National Security Act of 1947 explained the advisability of centralizing clandestine operations abroad and emphasized that the Central Intelligence Agency "must have the authority to collect in the field of national, as opposed to departmental, intelligence, where we have the means to fill the gaps, ^{by} ~~left~~ overt collection" by clandestine or semi-covert means if necessary." He continued by saying that

"At the same time ~~it~~ must be remembered that any centralized clandestine service would be available to each of the departments for its specialized needs." ^{double space} The fact that the Central Intelligence Agency would participate in covert collection probably impressed the Congressman. References were made in debates on the bill, e.g., Congressman Hoffield on 19 July 1947 stated: "I want to impress upon the minds of the members that the work of this Central Intelligence Agency, as far as the collection of evi-

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dence is concerned, is strictly in the field of secret foreign intelligence, what is known as clandestine intelligence."

3. Debate in Congress

There was little opposition in the Congress to the plan for a central intelligence service. Several Congressmen pointed out that the intelligence agency provisions in the various unification bills were the most important parts of the unification legislation. However, there was a great deal of discussion particularly in committee on whether or not the Director should be chosen from one of the Armed Services or whether he should be a civilian. The Senate Bill provided that the Director of Central Intelligence was to be appointed from the armed services or from civilian life. A House amendment provided that the Director of Central Intelligence be appointed from civilian life. The reason most often given for the House amendment was that it was a step taken to prevent the Central Intelligence Agency from becoming a "Gestapo-type organization." ^(Senate - House) The conferees adopted the Senate version but with several conditions limiting the connections with his service of a Director chosen from the military services.

The following excerpts pertaining to the formation of a Central Intelligence Agency are taken from the debate on the unification legislation. In the House on 19 July 1947:

Mr. WADSWORTH: . . . In addition, under the Council there would be another element which is to advise the Council, subject to regulations made by the Council, in the field of Intelligence, in the foreign field; and there is established a central intelligence agency subject to the Council headed by a director.

political The function of that agency is to constitute itself as a gathering point for information coming from all over the world through all kinds of channels concerning the potential strength of other nations and their ~~political~~ intentions. There is nothing secret about that. Every nation in the world is doing the same thing. But it must be remembered that the Central Intelligence Agency is subject to the Council and does not

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act independently. It is the agency for the collecting and disseminating of information which will help the President and the Council to adopt wise and effective policies.

So with the information of that sort concerning other nations and information coming in with respect to our own resources, (both of which are available to the Council and President, we will have for the first time in our history a piece of machinery that should work and it is high time that we have it. We have never had it before. During this last war all sorts of devices were resorted to, obviously in great haste, to accomplish a thing like this. You may remember the huge number of special committees, organizations and agencies set up by Executive Order in an attempt to catch up with the target. We have learned as a result of the war that we should have some permanent organization, and that is the one proposed in this bill. ~~23~~ 11/

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Mr. KERSTEN of Wisconsin: It seems to me from what the gentleman has said that the Central Intelligence Agency is one of the very important parts of this entire set-up. I wish to ask the gentleman if there is a definite coordination provided for between that Agency and, say the Department of State? For I feel that certain information of the Agency would affect the activities of the entire system.

Mr. WADSWORTH: The gentleman is correct. May I point out that under the provisions of the bill the Central Intelligence Agency in effect must cooperate with all the agencies of the Government, including the State Department. It is the gathering point of information that may come in from any department of the Government with respect to the foreign field, including the State Department, of course; including the War Department, through G-2; including the Navy Department, through ONI. That information is gathered into the central agency to be evaluated by Central Intelligence and then disseminated to those agencies of Government that may be interested in some portion of it. ~~24~~ 12/

Mr. SHEPPARD: . . . On the next level above the National Military Establishment there is provided the National Security Council with the President as chairman, which will effectively coordinate our domestic and foreign policies in the light of sound information furnished by the Central Intelligence Agency, and with the knowledge of our manpower and material capabilities derived from the National Security Resources Board. ~~25~~ 13/

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Mr. PRICE: . . . As such, it is administrative unity, in the interest of coordinating the total war effort of the Nation, because in addition to putting an Army, a Navy and an Air Force under the direction of a single administrative Secretary of Defense, it places a War Council, the Joint Chiefs of Staff, the Munitions Board, a Research and Development Board, the Central Intelligence Agency, and other such departments in the National Defense Establishment. 26-14

Mr. JUDD: . . . Now, that sounds all right, but all of us, being human beings, surely know that if a one-star general is Director of Intelligence, and a two-star general or a three-star general talks to him, it is wholly unrealistic to imagine that they will not have an influence over him despite the law.

The man who had charge of our secret intelligence in Germany during the war was a civilian, Mr. Allen Dulles. He did such an extraordinary job that he was in contact with the top men in Hitler's secret service. Hitler had to execute his top five men because they were double-crossing him and playing ball with our people. Mr. Dulles told us that the man that takes this job ought to go into it as a man who goes into a monastery. He ought to take it as J. Edgar Hoover has taken the FBI job - make it his life's work. He certainly ought to be cut completely loose from any ties or responsibilities or connections with any other branch of the Government - civil or military - except the President and the National Security Council. 15

Mr. MANASCO: ~~Mr. Chairman, I rise in opposition to the amendment.~~

... Mr. Chairman, this section on central intelligence was given more study by our subcommittee and by the full committee than any other section of the bill. It was a most difficult section to write. All of us had the same objective in view, yet we had different ideas on it. I think personally that the compromise we reached adequately protects the position. Eventually I certainly trust that the head of this intelligence agency will be a civilian who is trained in the agency. It takes years to train that type of man. Some will tell you that the present director is not adequately trained; that is true. We do not have any man in the United States who has adequate training today to do this kind of work because unfortunately the United States has never gone in for the right kind of intelligence. If we had had a strong central intelligence organization, in all probability we would never had had the attack on Pearl Harbor; there might not have been a World War II. Many witnesses appeared before our committee. We were sworn to secrecy, and I hesitate to even discuss this section because I am afraid I might say something, because the CONGRESSIONAL RECORD is a public record, and divulge some information here that we received in that committee that would give aid and comfort to any

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potential enemy we have. For that reason I am even reluctant to mention the testimony. I hope the committee will support the provision in the bill, because the future security of our country in a large measure depends upon the intelligence we get. Most of it can be gathered without clandestine intelligence, but some of it must be of necessity clandestine intelligence. The things we say here today, the language we change, might endanger the lives of some American citizens in the future.

I think you can rely on the patriotism of men like the gentleman from New York (Mr. WADSWORTH), the gentleman from Massachusetts (Mr. McCORMACK), the gentleman from California (Mr. HOLIFIELD), the gentleman from Michigan (Mr. HOFFMAN). We did our best to work out language here that would protect that position and keep from building up a so-called military hierarchy. A bill will be introduced soon after this legislation becomes law that will be referred to the Committee on Armed Services, where more study can be given to this most important subject. 19 15
~~I sincerely trust that the amendment will be voted down.~~

Mr. BUSBEY: . . . The main point in the amendment offered by the gentleman from Minnesota (Mr. JUDD) is permanency and the effort to work toward a civilian head who is not influenced by any department of our Military Establishments. 29 126

Mr. PATTERSON: Mr. Chairman, I should like to direct myself now to section 105 concerning the Central Intelligence Agency, to which section my proposed amendment relates. The amendment, in effect, provides that a civilian shall head this Intelligence Agency rather than allowing a choice of a civilian or a military man. It also provides that the powers granted the Central Intelligence group under the President's Executive order shall pass on to the National Security Council as was designated in the bill which passed the other body on July 9.

The amendment further provides that the authority and functions of the Central Intelligence Agency shall be those which were designated under the President's Executive Order. As this section is not constituted, the Director of the Intelligence Agency to be chosen by the President, with the consent of the Senate, may be either a civilian or an officer of the armed services. I feel that it is extremely undesirable to have as head of this agency, in a position which makes it incumbent upon him to coordinate intelligence reports from the various services, a member of one or the other services. A civilian in this position would not be subject to a cry of discrimination or favoritism and would, therefore, be in much

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better position to be completely objective in discussion. The portion of this amendment which related to the granting of powers under the President's Executive order to the National Security Council retains at least a semblance of power within this agency to effectively coordinate, evaluate, and disseminate information which is gathered by other intelligence services.

By confining its powers to this authority, we, therefore, effectively deny to the Central Intelligence Agency the power to interfere with the work personally being done by established services in this field.

I refer you, Mr. Chairman, to the House Report No. 2734 of the Seventy-ninth Congress, which is a report on the intelligence section of our national war effort and which includes recommendations made by the House Committee on Military Affairs at that time. While the mistakes of World War II are still fresh in our minds, the committee undertook a survey to determine what our policy on national intelligence should be. Their recommendations are not wholly carried out in the measure here contemplated; but the gains made since their report would be consolidated by adoption of this amendment.

I feel, Mr. Chairman, and I cannot stress it too strongly, that what is needed is an independent intelligence agency, working without direction by our armed services, with full authority in operational procedures.

However, it seems impossible to incorporate such broad authority into the bill now before us - so consequently I support the amendment which has now been offered. To do less than that would be to wreck what little has been done to strengthen our intelligence system. I feel that it is very important for the security of our Nation, at a time when our security is more and more threatened, to grant adequate authority to the Central Intelligence Agency.

In conclusion, Mr. Chairman, I do want to commend the gentleman from Michigan (Mr. HOFFMAN) and the other members of his committee for their ardent work and fairness in reporting this measure. 39 18

Mr. JUDD: . . . The Director of Central Intelligence is supposed to deal with all possible threats to the country from abroad, through intelligence activities abroad. But without this amendment he will have not only the results of the FBI's intelligence activities here at home, but also the power to inspect its operations. I do not believe that if we had realized the full import of this language when we were studying it in committee we would have allowed it to stand as it is. Surely we want to protect the Atomic Energy Commission and the FBI from the

39 18
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Director of Central Intelligence coming in and finding out who their agents are, what and where their nets are, how they operate, and thus destroy their effectiveness. 31

Mr. HOLIFIELD: I do not think it is necessary for him to inspect the operations in order to set up his own intelligence unit in the way that he wants to, and I point out that the National Security Council is composed of the Secretaries of State, of National Defense, of the Army, the Navy, and the Air Force, and the National Security Resources Board, and the Central Intelligence Agency, so it seems to me that the protection of the National Security Council is a check and the President is a check. I hardly think that the man could exceed his authority. 32

Mr. BUSBEY: In reference to the gentleman from California (Mr. HOLIFIELD), when he states that we can assume that this National Security Agency will do this and do that, I just wish to remind the membership that the trouble in the past with legislation has been that we have not taken the time to spell out these little details. It is these assumptions we have had that have gotten us into trouble. I think it is very important that the gentleman's amendment be adopted. 33

← In the Senate on 9 July 1947:

Mr. BALDWIN: . . . Under the Council there is established a central intelligence agency to provide coordinated, adequate intelligence for all Government agencies concerned with national security. When one reads the record of the past war in regard to that field it is found that there was much to be desired in the way intelligence was covered and there was great conflict about it. I say nothing here in depreciation of the men who were engaged in the intelligence service, because some remarkable and extremely courageous things were done. Nevertheless, we demonstrated from our experience the need of a central intelligence agency; and this bill provides such an agency. Neither a National Security Council nor an intelligence agency now exists.

Mr. HILL: . . . It would provide adequate security measures at all times, rather than only when hostilities threaten. It creates the National Security Council, the National Security Resources Board, the Central Intelligence Agency, the Munitions Board, and the Research and Development Board, in order that we may make certain that our foreign and military policies are coordinated and mutually supporting; that a central intelligence agency may collect and analyze the mass of information which is so essential for the Government to maintain peace and

31 12/1
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33 21/1
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without which the Government cannot wage war successfully

Mr. GURNEY: . . . The bill also provides for a National Security Council, a Central Intelligence Agency, and a National Security Resources Board, all of which report directly to the President, but which also work closely with the agencies under the Secretary of National Security.

Mr. GURNEY: . . . As an important adjunct to the National Security Council there is provision for a Central Intelligence Agency, which fills a long recognised demand for accurate information upon which important decisions relating to foreign and military policy can be based.

CIA enabling legislation

In the unification hearings, Admiral Sherman said that the Central Intelligence Agency was not adequately covered in the merger bill and in the debate on

the House bill Mr. McCormick pointed out that :

"We felt, since enabling legislation was going to come in later from another standing committee of the House . . . the question that would arise in connection with this Central Intelligence Agency, should be left to the standing committee, and that our committee should try to meet the immediate problem."

The "immediate problem" was solved by the passage of the National Security

Act of 1947, which was signed by President Truman on 26 July 1947. 31

legislation defining the authorities of a central Intelligence Agency and

establishing certain procedures for its administration had been prepared

after the CIU was formed, but with the emphasis in 1947 on the passage of the

armed forces merger legislation with its central intelligence provisions, the

effort devoted to enabling legislation for CIA slackened. However, the need

for such legislation became more and more acute. In April of 1947, before the

34 CR 8671

35 CR 8462

36 CR 8466

passage of the National Security Act, a draft of enabling legislation was presented to the House Committee on Expenditures, but it was not until the next year that a serious effort was made to enact CIA legislation.

On 24 February 1948, the Director, Rear Admiral Hillenkoetter appeared before the House Committee on Armed Services and answered affirmatively the Committee's question of whether legislation in addition to the National Security Act of 1947 was necessary. On 13 March, after approval by the White House, drafts of a proposed bill to provide for the administration of the Agency were submitted by CIA to the Chairman of the Senate Armed Forces Committee and the Speaker of the House. ~~38-24~~ Senator Gurney introduced on the same day S.2306, a bill "to provide for the administration of the Central Intelligence Agency established pursuant to section 102, ~~102~~ National Security Act of 1947, and for other purposes." A bill with the same title, H.R. 5871, was introduced on 16 March in the House and referred to the Committee on Armed Services. On 8 April the House sub-committee in executive session unanimously approved the provisions of the bill after discussing such points as whether debate on the House floor would not bring out classified information, and the authority of the Director to issue visas. The full committee approved the bill on 4 May. 1127

on 13 May the Senate Committee on Armed Services met in executive session with four senators present who were authorized to speak for the full committee. Certain changes were worked out and a "clean bill", S.2688 ~~40-26~~ which was introduced on 17 May.

~~39-24~~
Report to Accompany S 2688 80th Congress, 2nd Session
~~39-25~~
House of Representatives 80th Congress 2nd Session 1953. Central Intelligence Act of 1948.
~~40-26~~

Memorandum for the Record 12 May 1948 by W. J. Pfanzhoner.

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The new Senate Bill differed from the House version (H.R. 5871) in the following particulars: (1) Section 6(a) of the Senate Bill read: "transfer to and receive from other Government agencies such sums as may have been approved by the Bureau of the Budget and appropriated . . ." (2) Section 7(a)(1) of the Senate Bill included the phrase "personal services without regard to limitations on types of persons to be employed" instead of the phrase "employment of aliens" because the Committee thought, for reasons of security, that the word "aliens" should not appear in the law although it was the intent of the Committee that CIA employ aliens where necessary. (3) Section 7(b) which formerly read "of sums made available to the Agency such amounts as may be appropriated by the Bureau of the Budget may be expended . . ." was amended to read: "the sums made available to the Agency may be expended . . ."

Senate Report 1302 accompanying the bill states on page 3: ". . .and that such funds may be expended without regard to the provisions of law applicable to Government funds." This was a change from the original draft of the report which read: ". . .and that a portion of such funds. . ." The Chief Clerk of the Committee Staff informed CIA that the phrase "a portion" was deliberately struck out because it was the intent of the Committee that CIA should have complete control over the expenditures of its funds, vouchered and unvouchered.

The bill was passed over three times in the Senate, finally coming up for debate on 21 June. An amendment was offered by Senator McMahon striking out section 7(b) of S.2688 which gave the Agency authority to expend confidential funds. The Congress adjourned, however, with no further action on the CIA legislation.

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On 15 December 1948, the Agency presented a draft of legislation to the Budget Bureau which, after suggesting changes, advised CIA on 9 February 1949 that it would have no objection to the Agency sending the revised draft to the 81st Congress. On 11 February the drafts were sent to Congress with an explanation that it was substantially the same as S.2688 and H.R.5871 introduced in the 80th Congress.

The House Armed Services sub-committee No. 3 met on 18 February 1949 to consider the legislation, H.R.2663. The committee discussed it section by section and certain minor amendments were made including:

1. The term "the United States" was modified to include "its territories and possessions" so that natives of Hawaii, Alaska, Puerto Rico, and other possessions who were ordered home on leave could be ordered to the United States, its territories and possessions if such were their home.
2. The word "full-time" was inserted to qualify the phrase "officers and employees of the Agency" in order that the medical facilities involved in the legislation ^{would} be extended only to regular full-time employees of the Agency. It was agreed that these facilities should be extended to citizens of the United States and aliens employed by the Agency alike, but the facilities should not be extended to part-time custodial personnel and occasional employees of the Agency. However, physical examinations, inoculations and vaccinations should be given to all employees both full-time and part-time.
3. The question arose as to the hospital and medical facilities which were to be extended to covert native personnel acting as agents on a part-time basis. Because of the classified nature of this work, no mention of this could be made in a report. However, it was the intent of the committee that any agent who was not a full-time employee who was injured in the course of

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duty for the Agency should be considered to be a full-time employee of the Agency on that date and be subject to the full provisions of the act.

4. In connection with the carrying of fire-arms, the phrase "and guards" was inserted after the word "courier". The explanation generally offered was that there may be times when CIA would wish to arm a guard with the courier rather than the courier himself.

5. The intent of the committee was that the only laws to be waived in connection with the admissibility of aliens under the act were those for permanent residence without regard to the immigration laws and regulations. There was no intent to waive any laws regarding the conduct of these aliens once they were in the United States. The committee thought that the aliens admitted should be subject to all laws once they had been admitted, including those concerning deportation for cause. The committee suggested the use of the phrase "calendar year" in the section instead of "fiscal year" so that CIA would have the benefit of an extra 100 aliens in fiscal 1949.

The sub-committee approved and recommended the bill to the full committee which unanimously approved it. In a hearing before the Rules Committee, Mr. Sasser described the bill, and in answer to a question he stated that the powers of the Agency were not broadened beyond those enumerated in the National Security Act of 1947. Representative Walter noted that the provisions on admitting aliens infringed "on the jurisdiction of the Judiciary Committee" and also that this provision was loosely drawn, so he requested that an open rule be granted "so that the attention of the Congress may be directed to section 8 of the bill". This was granted.

Debate with a suspension of rules on the bill took place on 7 March 1949. Mr. Marcantonio provided the major opposition to the bill in debate, basing his argument on such issues as the secrecy imposed which deprived

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Congressmen of a full explanation of the bill, the danger to civil liberties, the inappropriateness of confidential funds and the undesirability of the alien provisions. Mr. Celler also objected to the alien provisions mainly on jurisdictional grounds. The bill passed 348 for and 4 against.

The jurisdictional issue of the alien provision was of some concern in the Senate. Senator McCarren on 11 March interposed an objection to the consideration of the bill probably because the Judiciary Committee of which he was chairman had not been given the bill for consideration. After a meeting with the Director at which the Director explained the alien provision and agreed to furnish the Senator with a regular confidential report on the number of aliens brought in under it, Senator McCarren withdrew his objections and wrote to Senator Lucas that he would support the bill.

The Senate Committee on Armed Services reported out H.R. 2663 on 10 March 1949. In the debates ^{on} of 27 May 1949, ⁴¹⁻²⁷ Senator Langer provided most of the opposition to the bill based mainly on the secrecy surrounding the Act and the alien provisions in it. He offered two amendments which were accepted, one to provide that CIA employees while in the continental United States on leave shall not be available for employment except by CIA, and ^{an} other requiring a determination by the Commission of the Immigration Service as well as by the Director of Central Intelligence and the Attorney General before the admission of certain aliens to the United States for permanent residence

⁴¹⁻²⁷
C.R. 27 May 1949, p. 7082-7090.

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was granted without regard to the immigration laws. Senator Johnson

also voiced some objection to the bill but announced he would vote for it. He was concerned that CIA would have "sweeping powers which are being vested in the military through this piece of legislation." The Senate passed H.R. 2663 as amended by a voice vote. On 6 June the Conference Committee reported agreement on the amendments and on the same day the Senate adopted the Conference Report and on the following day after a short debate in which Mr. Marcantonio again opposed the measure and Mr. Walter again spoke on the alien provision the House passed H.R. 2663, as amended. President Truman signed the Central Intelligence Act on 20 June 1949.

this also applied to the 1949 legislation.

to grant to the Central Intelligence Agency the authorities which carry the legal responsibility
On 20 June 1949, the basic statute was passed. Given the official short title of "The Central Intelligence Act of 1949," the statute is cited as 63 Stat. 208, 50 USC 403(a) (1949), or as P.L. 110, 81st Congress, 1st Session (1949). As amended, the Act is the basic constitution for the Agency.

Summary of

CENTRAL INTELLIGENCE AGENCY AUTHORITIES

Executive

The Central Intelligence Agency is organized within the Executive Branch of the Government, and it is responsible to the National Security Council, the function of which is to advise the President with respect to the integration of domestic, foreign, and military policies relating to the national security so as to enable the military services and the other departments and agencies of Government to cooperate more effectively in matters involving national security.¹⁷ The President, as the "sole organ of the Federal Government in the field of international relations,"¹⁸ holds at his command the executive power of the Government. Under this power, theoretically he is beyond the reach of any other branch of the Government except in the mode prescribed by the Constitution - through the impeachment power - and he administers his branch so that he can most effectively discharge his duties.¹⁹ The National Intelligence Authority was founded and the Central Intelligence Group was formed by Presidential Directive in 1946 to assure the most effective accomplishment of the intelligence mission related to national security which is a matter considered within the Executive purview.²⁰

17. Intelligence Activities, A report to the Congress, June 1955.

18. U.S. v Curtiss Wright; 299 US 304 (1935).

19. Kendall v U.S., 1380; 37 US 524 at 610.

20. Views of Mr. Hayden, Senate Report No. 1570. Committee on Rules and

Administration, 74th Congress, 2d Session, 1955. Report of the U.S. Senate Joint Committee on Central Intelligence; on 26-27.

It was recognized at an early date in our history, however, that officers in the Executive Branch were not under the exclusive direction of the President. Duties and responsibilities grow out of and are subject to the control of the law, and not only to the direction of the President, ^{but} who must see to it, however, that the laws are faithfully executed.

Congress

Congress has seen to it that the President has considerable help available for his administrative burdens. In the development and implementation of major policies he has the assistance of various offices created by acts of Congress. The National Security Act of 1947 was one of these as was the Central Intelligence Agency Act of 1949.

The provisions of the National Security Act are a recognition by the Congress of the highly sensitive nature of Government intelligence activities. The "availability of intelligence of the highest order to the President and to the National Security Council is an essential element in the formulation of the foreign policy of the United States, and in the conduct of foreign relations by the President in carrying out that policy." ²¹ Vis-a-vis its appropriation and investigative function, Congress is concerned with the operation of agencies within the Executive Branch. CIA is aware of its position of being dependent on Congress for its legislation and its existence but with its obvious security problems Mr. Allen Dulles, the Director, has stated: "In intelligence you have to take certain things on faith. You have to look to the man who is directing the organization and the results he achieves." ²² *The Armed Services and Appropriations Committee of both Houses have exercised jurisdiction over CIA* ~~Because of security implications, CIA has attempted to conduct its liaison with Congress through the Armed Services and Appropriations subcommittees of both Houses.~~ As a result the Armed Services Committees of the

²¹ 21. Kendall v U.S., supra at 610.

²² 22. See note 16, supra.

²³ 23. United States News and World Report, 19 March 1954 at page 68.

Senate and the House have continuously maintained "supervision over the operations of [CIA] to an entirely adequate degree." ²⁴ ³⁵¹ Pressure for a CIA Watchdog Committee of Congress arises periodically but has never been voted. ³³⁷

National Security Council

As an executive agency, CIA is under the control of the President, but Congress in the National Security Act of 1947 prescribed that CIA "is established under the National Security Council." Furthermore, according to the Act, for the purpose of coordinating intelligence activities the Central Intelligence Agency is given certain duties to perform under the direction of the NSC. Section 102(d)(5) of the National Security Act of 1947 is a catch-all provision with rather broad implications stating that CIA shall "perform such other functions and duties related to intelligence affecting the national security as the National Security Council may from time to time direct." Taken out of context and without knowledge of its history, this section could bear almost unlimited interpretation, provided the service performed could be shown to be of benefit to an intelligence agency or related to national intelligence. A review of the Congressional debates, however, indicates that ^{understanding was first developed} Congress was primarily interested in an agency for coordinating intelligence and originally did not propose any overseas collection activities for CIA. ^{INSERT (see 73)} The strong move to provide specifically for such collection overseas was defeated, and, as a compromise, sections 102(d)(4) and (5) were enacted, which permitted the National Security Council to determine the extent of the collection work to be performed by CIA. ~~Congress probably did not conceive~~ ^{It is not probable that there was any thought in the mind of Congress}

24. Hayden op. cit. supra at 23.

25. Commission on Organization of the Executive Branch of the Government: Intelligence Activities, A Report to the Congress, June 1955.

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that the Central Intelligence Agency under this authority would take positive action, for example, in subversion and sabotage. Confirmation for this is found in the prior and off-the-record hearings on appropriations for CIA in 1947.²⁶

The National Security Council in directing the Central Intelligence Agency does so through National Security Council Intelligence Directives which, of course, are binding upon CIA. When the NSC forms a basic policy and assigns implementation to CIA, the Agency then has authority to go ahead. However, it still may be necessary to go to Congress for authority and funds.

penal in before last sentence

on p 42:
INSERT

While Congress recognized that CIA would participate in clandestine collection operations.

26. Opinion of OGC, 25 September 1947, filed under "Legislation."

~~SECRET~~

To Remain Silent

Howard v. the Odhams Press, 106 L.J.K.B. 675
(1937)

This case involves a puzzle contest run by a newspaper. The newspaper suspected that somehow various groups were obtaining the correct answer and fraudulently winning the prize money. To investigate this the newspaper who was the defendant in this case hired a private detective who proceeded to question numerous employees who worked on the contest. One of the employees questioned was the plaintiff who had information concerning a well organized ring and system used to win the prize money. The guilty parties were fellow employees. *he had also participated* The plaintiff agreed to give information on the system used if the newspaper in turn agreed to keep his disclosures in absolute confidence. The contract on this basis was completed and the plaintiff furnished written information to the defendant exposing his fellow employees.

Some time later the investigator became irritated with the plaintiff and the type of information he was furnishing and apparently threatened to release the original written statement unless the plaintiff cooperated more fully. The plaintiff refused any more information and accordingly the original written

statement was released in controvension of the
secrecy clause. As a result of this plaintiff
was expelled from his union on the grounds of making
damaging statements against fellow union members.
He also of course lost his job in the union shop
At that point plaintiff brought this action for damages,
i.e., the loss of his job and union membership,
occasioned by the breach of the secrecy agreement.

The court awarded him damages and in the course of the
opinion did not question the fact that this was a
valid agreement and could be enforced. In this particular
case breach of the agreement lead to monetary damages.
However, from the discussion in the opinion it appeared
that had the plaintiff brought his case earlier he could
have received an injunction to prohibit the release
of the information.

it
The value of this case is that ~~there~~ is one in
which a contract is purely and simply a secrecy agreement
There is no trade secret to be protected and it was
merely an agreement to keep quiet. Thus of all the con-
tracts seen so far this is the closest one to an agency
secrecy agreement. It is noteworthy that the court
has no difficulty in enforcing it. In fact the only
argument against it was that it might have been against
public policy because it agreed to suppress information
of a possible crime. This was ruled out because it was
questionable if it was a crime and secondly it had
already been committed.

H. L. .
1. on assumption
K was valid it
could recover
only nominal
damages, for
loss due to
his own wrongful
act.

2. but K was
v. public
policy & unenforceable.
for D should
not agree to
anything which
would keep
authorities from
the fact.

1 dissent on 2.

In this case the plaintiff hired the defendant who was an accountant to investigate confidentially the accountings of a company in which the plaintiff was interested. In giving his directions to the accountant the plaintiff made several livelless statements in a letter concerning the company to the investigator. The accountant negligently left this letter in the company's office where it was found and read. The company thereupon sued the plaintiff for liable and was awarded damages. The plaintiff in turn brings this suit to indemnify him for the damages which he claims where caused by the negligence of his agent.

The court awarded ^{nominal} damages on the theory that the accountant was ^{an} the agent and as such owed him a implied duty to keep such matters secret. Thus, even though there was no express contract the employer in this case was able to collect damages from an employee who revealed, even negligently in this case, confidences of the employer of a type which any agent would have the duty to keep confidential.

This case is cited often to support the contention that there is a duty ^{of} an employee to remain silent concerning information which if released would be detrimental to the employer.

Strunders v. Boyd and Kelly's Credit Index, 75 I.T. 198 (1896)

*not in full
to full damage
unanimity
because of
negligence.*

This case involves an implied contract between

the credit agency and a subscriber to keep the information furnished confidential. Actually the subscriber was not really a subscriber but had been given a sample volume by a salesman attempting to sell him a subscription. In looking over the volume he noticed derogatory information about several firms in which he was interested. He reported this to one of these firms and the firm sued the credit index for liable and collected. The credit index in turn sued the defendant for indemnification claiming that it had breached the implied contract not to release this information. The court awarded the damages saying

"A contract might lawfully be made not to disclose the contents of a defamatory publication and contracts of that kind are habitually made between trade societies and their customers. These are neither illegal or contrary to public policy."

Bradstreet British Limited v. Mitchell , I C.F. 190 (1933); 102 L.J., C.H. 34

This is the most recent case involving a contract to remain silent. The contract is a typical one between a credit agency and its subscribers. In this case a firm suspecting that it had been given a poor rating set one of its directors up in a dummy corporation to subscribe to the service and thus obtain evidence against the credit agency. The desired information was obtained and the credit agency was threatened with a suit for liable. This juncture which brought the present suit against the director who had subscribed

*Samuel was customer
not to solicitor
+ revealed it to
orig II*

*decided that since
no K. then soli was
not a duty. to
withhold.*

*says if A had
entered into K wrong
OK.*

further disclosures. The contract stated that

A. "all information furnished by this company to subscribers is supplied in the strictest confidence for exclusive use for the latter's business. The subscribers understands that under no circumstances will he reveal either the nature of the information or the fact that it has been supplied by the company to any party."

The only issue was whether A. had duty or could be contracted with info country & label - yes.

The court held that the plaintiff was entitled to nominal damages since no actual damages were shown and also could obtain an injunction if they thought it necessary. Again there was no question that this was an enforceable contract.

It is true that the information protected here although not a trade secret in the classic sense would concern information which was the stock in trade of this particular business. And, in fact, any subscriber could with impunity release this information. Not only would the credit agency be subject to many liable suits but also would find itself in competition with people who sold the information which they had collected at a smaller price. On second though the way in which the Agency itself sold the information by charging certain amounts per request on one company it would seem that its business would not be hurt appreciatively by the requester in turn selling that information.

SENDER WILL CHECK CLASSIFICATION TOP AND BOTTOM				
UNCLASSIFIED		CONFIDENTIAL		SECRET
CENTRAL INTELLIGENCE AGENCY OFFICIAL ROUTING SLIP				
TO	NAME AND ADDRESS		INITIALS	DATE
1	Mr.	[REDACTED] 2032 R&S		
2				
3				
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5				
6				
ACTION		DIRECT REPLY	PREPARE REPLY	
APPROVAL		DISPATCH	RECOMMENDATION	
COMMENT		FILE	RETURN	
CONCURRENCE		INFORMATION	SIGNATURE	
Remarks: [REDACTED] In view of the imminent issuance of the new NSCIDs, I wonder if a historical note along these lines would be of interest to the Studies. If you think so, it would need a good deal of editing and boiling down, but we would be glad to work at it. I will be away during August, but [REDACTED] will be back 18 August and you might want to talk to him about it. <div style="text-align: right;">LRHouston</div>				
FOLD HERE TO RETURN TO SENDER				
FROM: NAME, ADDRESS AND PHONE NO.				DATE
General Counsel 221 East				7/31/58
UNCLASSIFIED		CONFIDENTIAL		SECRET

FORM NO. 237
1 APR 55Replaces Form 30-4
which may be used.(40)
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SENDER WILL CHECK CLASSIFICATION TOP AND BOTTOM			
<input type="checkbox"/>	UNCLASSIFIED	<input type="checkbox"/>	CONFIDENTIAL <input checked="" type="checkbox"/>
		<input checked="" type="checkbox"/>	SECRET
CENTRAL INTELLIGENCE AGENCY OFFICIAL ROUTING SLIP			
TO	NAME AND ADDRESS	INITIALS	DATE
1	Mr. LR Houston		
2	221 East		
3			
4			
5			
6			
<input type="checkbox"/>	ACTION	<input type="checkbox"/>	DIRECT REPLY
<input type="checkbox"/>	APPROVAL	<input type="checkbox"/>	DISPATCH
<input type="checkbox"/>	COMMENT	<input type="checkbox"/>	FILE
<input type="checkbox"/>	CONCURRENCE	<input type="checkbox"/>	INFORMATION
<input type="checkbox"/>		<input type="checkbox"/>	PREPARE REPLY
<input type="checkbox"/>		<input type="checkbox"/>	RECOMMENDATION
<input type="checkbox"/>		<input type="checkbox"/>	RETURN
<input type="checkbox"/>		<input type="checkbox"/>	SIGNATURE
Remarks:			
Returning the Attached with THANKS - have finished with it.			
<div style="border: 1px solid black; width: 150px; height: 40px; margin: 10px auto;"></div>			
FOLD HERE TO RETURN TO SENDER			
FROM: NAME, ADDRESS AND PHONE NO.			DATE
C/CI/R+A 1302 J <div style="border: 1px solid black; width: 50px; height: 20px; display: inline-block;"></div>			10-9-58
<input type="checkbox"/>	UNCLASSIFIED	<input type="checkbox"/>	CONFIDENTIAL
		<input checked="" type="checkbox"/>	SECRET

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(40)

SENDER WILL CHECK CLASSIFICATION TOP AND BOTTOM			
	UNCLASSIFIED	CONFIDENTIAL	SECRET
CENTRAL INTELLIGENCE AGENCY OFFICIAL ROUTING SLIP			
TO	NAME AND ADDRESS	INITIALS	DATE
1			
2			
3			
4			
5			
6			
	ACTION	DIRECT REPLY	PREPARE REPLY
	APPROVAL	DISPATCH	RECOMMENDATION
	COMMENT	FILE	RETURN
	CONCURRENCE	INFORMATION	SIGNATURE
Remarks: <p style="text-align: center;">Returned, with thanks.</p>			
FOLD HERE TO RETURN TO SENDER			
FROM: NAME, ADDRESS AND PHONE NO.			DATE
Asst. to the Director			10/24/58
	UNCLASSIFIED	CONFIDENTIAL	SECRET

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